IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1489 (SS) OF 2003

1. S.P. Joshi, S/o G.V. Joshi, working as Photo Assiostant in Lakhwad Nirman Khand I Dakpathar, Irrigation Department Uttaranchal.
2. Mohd. Mumtaz, S/o Niyaz Ahmad Ansari working as Mechanic Test and Control Division, Dak Pathar Irrigation Department Uttaranchal.
3. Madan Singh, S/o Fateh Singh working as Driver Test and Control Division Dak Pathar Irrigation Department, Uttaranchal.
4. Khayalee Ram, S/o late Sri Majlus working as Mate, Test And Control Division Dak Pathar Irrigation Department Uttaranchal.
5. Shyam Swaroop Sharma, S/o Babu Ram Sharma, working As Supervisor Irrigation Lakhwar Colony, Division Dakpathar, Irrigation Department, Uttaranchal.
6. Ved Prakash Sharma, S/o Ramdharee Sharma, Working as Supervisor Irrigation Lakhwar Colony Division Dakpathar, Irrigation Department, Uttaranchal.
7. Shambhu Prasad, S/o Hathee Ram working as Chaukidar Kotee Awas & Sanchar Khand Dakpathar Irrigation Department Uttaranchal.
8. Bharat Bhushan, S/o Ranjendra Prasad working as Laboratory Assistant in Test & Control Joshiara Uttarkashi Irrigation Department, Uttaranchal.

.....Petitioners.

Versus

1. State of Uttaranchal, through Secretary Irrigation Department, Dehradun.

2. Engineer-in-Chief/Head of the department Irrigation Karmik Anubhag, Irrigation Department, Uttaranchal, Yamuna Colony Dehradun.
3. Chief Engineer (Yamuna), Irrigation Department, Yamuna Colony, Dehradun.

.....Respondents

Sri S.S. Yadav, Advocate for the petitioner.
Learned Standing Counsel for the respondents no. 1 to 3.

Dated: 23.02.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioners have prayed for a writ of mandamus directing the respondents no.2 and 3 to take decision in respect of work charge employee/petitioners regarding the counting of rendered service in work charge period and direct to fix the pensionery benefit treating the petitioners whole time service as full length of service. Further prayer has been made for a writ of mandamus directing the respondents to frame a policy and take decision on the minutes of meeting held between Irrigation Department Employees Union" and respondents on 24.02.2003 and 07.09.2003 (Annexures 3 and 4 to the writ petition).

Brief facts giving rise to the present writ petition are that the petitioners no.1 to 8 were initially appointed in work charge establishment. The petitioner no.1 and 3 were appointed in the year, 1970, petitioner no.2 was appointed in the year, 1964, and petitioners no. 4, 5 and 8 were appointed in the year, 1969, petitioner no. 6 was appointed in the year 1967 and petitioner no. 7 was appointed in the year, 1973. The petitioner no. 1 was regularized on 09.07.1997 after about 27 years of service, petitioner no.2 was regularized on 26.07.1998 after about 34 years of service, petitioner no.3 was regularized after 16 years of service, petitioner no.4 was regularized after 24 years of service, petitioner no. 5 was regularized after 31 years of service,

Petitioner no. 6 was regularized after about 13 years of service on 01.09.1989, petitioner no.7 was regularized on 09.07.1998 after about 24 years of service and petitioner no. 8 was regularized on 01.11.1994 after about 25 years of service.

Petitioner no. 1 was 20 years old at the time of his appointment and petitioners no. 2, 4, 5, 6, 7 and 8 were of 19, 23, 21, 22, 27, 23, years of age respectively at the time of their appointment.

Petitioners have submitted that after rendering satisfactory services, they were regularized after a long time of their initial appointment and it is their apprehension that after retirement, their rendered services before regularization will not be included, and they will not be able to get pension even after they have spent a long time in the said department.

The petitioners are the members of "Irrigation Department Employees Union" and the Union made an application stating the problems of the employees before the respondent no. 3.

In the year, 1997, the respondent no. 3 wrote a letter to the respondent no. 2 (prior to division of State of U.P. this power vested in Chief Engineer Sajja Evam Samagri Lucknow) in which the respondent no. 3 stated that the Union is making pressure regard regularization of work charge workers and for all benefits in view of the Apex Court's judgment *State of Haryana Vs. Piyaran Singh and others SCC 1992 (4).*

Thereafter, respondent no. 2 again wrote a letter on 24.11.1997 to the Head of the Department, but till date no attention has been made given to the same by the department.

The petitioners have referred the judgment of ***Haryana Vs. Pyara Singh, AIR 1992 SC 2130.*** The relevant observation is quoted below:-

"So far as the work charged employees and casual labour are concerned, the effort must be to regularize them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. It a casual labour is continued for a fairly long spell-say two or three years- a presumption may arise that there is regular need for his services. In such situation it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court security of tenure is necessary for an employee to give his best to the job."

In ***Writ Petition No. 91 of (S/S) of 2003 Bhaguli Devi Vs. State of Uttaranchal and others,*** similar controversy arose, where the employee concerned has worked on daily-wage for about 16 years and this Court has held as under:-

"For the reasons recorded above, since the petitioner's husband was continuing in employment for more then 16 years, petitioner is entitled 5to get benefit of the Uttar Pradesh Recruitment of Dependants of Government Servants Rule 1974, which has been adopted by the State of Uttaranchal.

In view of the above discussion, I direct the respondents Authorities to consider the claim of the petitioner for providing her appointment under Uttar Pradesh Recruitment of Dependants of Government Servants Rules 1974 within a period of six weeks from the date of production of certified copy of this order."

In view of the above, the respondents are directed to consider the case of the petitioners for giving his pensionery

Benefits on the basis of service rendered by his as work charge employees.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

23.02.2006
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